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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,753	01/23/2002	Sergei Bavykin	0003/00377	9563
27197	7590	09/05/2006	EXAMINER	
CHERSKOV & FLAYNIK THE CIVIC OPERA BUILDING 20 NORTH WACKER DRIVE, SUITE 1447 CHICAGO, IL 60606			KIM, YOUNG J	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

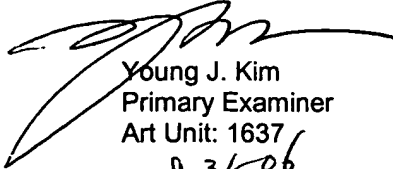
ART UNIT	PAPER
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20060831

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents


Young J. Kim
Primary Examiner
Art Unit: 1637
2-31-06

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/057,753	Applicant(s) BAVYKIN ET AL.	
	Examiner Young J. Kim	Art Unit 1637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

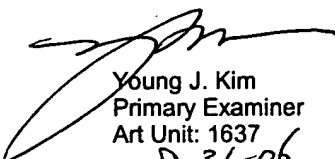
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

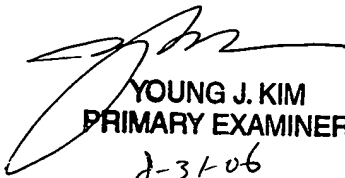
REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


 Young J. Kim
 Primary Examiner
 Art Unit: 1637
 8-31-06

Continuation of 3. NOTE: Applicants have amended the independent claim 1 and 9 so as to require that the free radicals are generated in nucleic acid molecules by contacting with hydrogen peroxide and a specific species of phenanthroline-Cu(II). This amendment necessitates further consideration so as to determine whether the claimed embodiment is free of prior art. While a specific species, 1,10-phenanthroline-Cu(II) was recited in dependent claims (claims 3 and 11), said dependent claims contained a Markush group of members which also included bleomycin-Fe(III), EDTA-Fe, ascorbic acid-Cu, methylene-blue-Cu, metalloporphyrin. The invention as claimed was drawn to any one of the members and not a particular member. Hence, Applicants' cancellation of the member from which a prior art rejection was based and reciting a single particular member would require further search and consideration so as to determine whether the specific embodiment now claimed would be free of prior art. In addition, Applicants have amended the independent claims 1 and 9 so require a more generic compound, phenanthroline-Cu(II) and not the specific compound, 1,10-phenanthroline-Cu(II). Thus, the newly amended claims seek to embrace scope which is broader than that which was claimed and presented in the dependent claims 3 and 11, the scope of which was neither presented or considered during prosecution. Applicants are advised to peruse the specification to find written support for the method of using a more generic compound, phenanthroline-Cu(II), rather than the specific compound, 1,10-phenanthroline-Cu(II) which was claimed during prosecution so as to exclude new matter.

MPEP 714.13 states that Applicants cannot, as a matter of right, amend any finally rejected claims, except when an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some way requires only cursory review by the examiner. As fully explained above, Applicants' amendments raise new issues, requiring more than a "cursory review." Therefore, the present amendment will not be entered.


YOUNG J. KIM
PRIMARY EXAMINER
J-3106